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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,108	07/14/2003	Malcolm Muir	84873.000014	5809
23387	7590	11/30/2004		
Stephen B. Salai, Esq. Harter, Secrest & Emery LLP 1600 Bausch & Lomb Place Rochester, NY 14604-2711				
EXAMINER KYLE, MICHAEL J				
ART UNIT		PAPER NUMBER		
3676				

DATE MAILED: 11/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/619,108

Examiner

Michael J Kyle

Applicant(s)

MUIR, MALCOLM

Art Unit

3676

MW

- The MAILING DATE of this communication appears on the cover sheet with the correspondence address -
- Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-13 and 15 is/are rejected.
- 7) ☒ Claim(s) 10 and 14 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
- Patent No(s)/Mail Date 11/17/2003.

- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Objections

1. Claim 15 is objected because line 9 of claim recites "a first link". Examiner believes "first" should be --first--.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-3, 5-8, 11-13, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vetter (U.S. Patent No. 4,674,149) in view of Taylor (U.S. Patent No. 4,364,201). With respect to claims 1, 5, 6, and 15, Vetter discloses a hinge assembly including an elongate track (40), a support extension (50) connected to the track and having a planar bearing surface (outer surface of 50), and an end cap (75). Vetter also discloses a first link (70) and a second link (65), both pivotally attached to the support extension (50). A first pivot point associated with the first link is between the end cap and a second pivot point associated with the second link. Vetter further discloses a sash bar (52) attached to the first link, and a strut (60) attached to the sash bar. While item 50 of Vetter may be considered a shoe, examiner has already designated this item as reading on the "support extension" in the claims. Therefore, in the present interpretation of Vetter, a shoe slidably engaging the track is not disclosed.
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4. Taylor teaches a full opening linkage assembly comprising a track (16), first and second links (26, 28), a sash bar (30), and a strut (32). The assembly further includes a shoe (18) slidably engaging the track. The first and second link linearly fixed near the top of the elongate track. By linearly fixing the first and second links, and providing a sliding shoe at the bottom of the assembly, connected to the strut, Taylor allows the window to open to a position providing a maximum open space that allows for escape through the window (abstract). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Vetter as taught by Taylor, such that the first and second link of Vetter are linearly fixed relative to the track, and a shoe is slidably engaged with the track and attached to the strut, in order to provide a maximum open space that allows for escape through the window.
5. With respect to claims 2 and 3, Vetter discloses the bearing surface to underlie a sufficient length of the second link (65) in the closed position. While Vetter and Taylor are silent as to what material the track is formed of, and what material the support extension is formed of, it is noted that the selection of a known material based upon its suitability for the intended use is a design consideration within the skill of the art. In re Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960).
6. With respect to claims 7 and 8, the combination of Vetter and Taylor disclose the sash bar to disposed generally perpendicular to the longitudinal dimension of the track. Additionally, the first link includes a tab (rivet 71) and the second link includes a recess (aperture in which rivet 66 is located).
7. With respect to claims 11 and 12, Vetter discloses the support extension (50) to have to apertures (to receive rivets 66, 71). It is not clearly shown or described in Vetter if the end cap

(75, 76, 77) has a curve with a continually varying first derivative. However, Taylor's end cap (60) shows the feature. Taylor uses the curve of 60 to provide a cam that biases the sash bar either to the open position or to the fully closed position. It would have been obvious to one having ordinary skill in the art at the time of the invention to replace the end cap of Vetter with that of Taylor to bias the sash bar to either the fully closed position or an open position.

8. With respect to claim 13, the combination of Vetter and Taylor shows a stop (46 in Taylor) that limits movement of the hinge assembly in an open configuration.

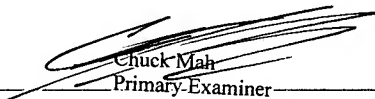
9. Claims 4, 8, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vetter in view of Taylor as applied to claims 1 and 5 above, and further in view of Stavenau et al ("Stavenau", U.S. Patent No. 3,838,537). Neither Vetter nor Taylor disclose the first and second link to include cooperating members or a tab and recess arrangement that engage one another.
10. Stavenau teaches a window hinge comprising a track (38) with first and second links (40, 74). First link (40) and second link (74) include cooperating members (80, 82, respectively) which comprise a tab (each gear tooth) and a recess (area between gear teeth). Stavenau uses this arrangement so that an application of an opening force at one edge of the window sash has the effect of also moving the opposite edge of the window sash away from the window frame without damaging the weather stripping (column 1, lines 42-52). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the first and second links of Vetter to include the gear members taught by Stavenau for the reasons cited by Stavenau in column 1, lines 42-52.

11. Claims 10 and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following references are cited to further show the state of the art with respect to sash window hinge assemblies: Pettit et al, Brain et al, Delaske, and Nakanishi et al.
13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J Kyle whose telephone number is 703-305-3614. The examiner can normally be reached on Monday - Friday, 8:30 am - 5:00 pm.
14. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on 703-308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.
15. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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